

#16

PTO/SB/66 (06-03)

Approved for use through 05/31/2006. OMB 0651-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))**

Docket Number (Optional)

Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Fax: (703) 308-6916

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

Patent No. 5,891,260 Application Number 795,038

Issue Date April 6, 1999 Filing Date February 5, 1997

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

**Also complete the following information, if applicable**

The above - identified patent:

☐ is a reissue of original Patent No. \_\_\_\_\_, original issue date \_\_\_\_\_;  
original application number \_\_\_\_\_,  
original filing date \_\_\_\_\_.

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application \_\_\_\_\_ filed on \_\_\_\_\_.

**CERTIFICATE OF MAILING (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

11/06/03

Date

Signature

Lan P. Ngo

Typed or printed name of person signing Certificate

[Page 1 of 3]

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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## 1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g).

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 1/2 yr fee	(1551)	<input checked="" type="checkbox"/> \$ <u>445.00</u>	3 1/2 yr fee	(2551)
<input type="checkbox"/> \$ _____	7 1/2 yr fee	(1552)	<input type="checkbox"/> \$ _____	7 1/2 yr fee	(2552)
<input type="checkbox"/> \$ _____	11 1/2 yr fee	(1553)	<input type="checkbox"/> \$ _____	11 1/2 yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ \_\_\_\_\_

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) of \$ 1,640.00 (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

SURCHARGE BEING SUBMITTED \$ 940.00

## 5. MANNER OF PAYMENT

☒ Enclosed is a check for the sum of \$ 940.00.

☐ Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_. A duplicate copy of this authorization is attached.

☐ Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition deficiency to Deposit Account No. \_\_\_\_\_. A duplicate copy of this authorization is attached.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## 7. OVERPAYMENT

As to any overpayment made please

- ☐ Credit to Deposit Account No. \_\_\_\_\_
- OR
- ☐ Send refund check.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

## 8. STATEMENT

The delay in payment of the maintenance fee to this patent was unintentional.

## 9. PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

11/06/03

Date

713-629-7966

Telephone Number

50549

Registration Number, if applicable

  
\_\_\_\_\_  
Signature(s) of Petitioner(s)Lan Q. Ngo

Typed or printed name(s)

3900 Essex Ln., Suite 730

Address

Houston, TX 77027

Address

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

## ENCLOSURES:

- ☐ Maintenance Fee payment
- ☒ Surcharge under 37 CFR 1.20(i)(2) (fee for filing the maintenance fee petition)
- ☒ Letter in response to office action

McFATRIDGE, BAKER & DEEN, P.C.

A PROFESSIONAL CORPORATION

LAN Q. NGO, P.E.  
Of Counsel  
U.S. Patent Attorney

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GALVESTON, TEXAS 77550  
(409) 766-7966  
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November 6, 2003

BY CERTIFIED MAIL  
7003 0500 0004 8614 4237  
RETURN RECEIPT REQUESTED

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

Re: Patent No. 5,891,260  
Application No. 795,038

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OFFICE OF PETITIONS

Dear Commissioner:

This letter is in response to your letter of October 29, 2003, a copy of which is enclosed, which dismissed our petition to reinstate the referenced patent under the unavoidably delayed payment of a maintenance fee file under 37 CFR 1.378(a). As suggested by your October 29, 2003 letter, petitioner submits a petition to accept the unintentionally delayed payment of a maintenance fee under 35 USC 41 and 37 CFR 1.378(c).

Included within, petitioner provides that:

- (1) The delayed payment of the maintenance fee for the referenced patent was unintentional as the firm had unfortunately experienced a breakdown in the computer system during the period from April 10, 2002, through October 10, 2002; and
- (2) A firm check in the amount of \$940.00 is included for payment of the additional surcharge, which is the balance of the \$700.00 surcharge already paid and credited against the \$1,640.00 surcharge as set forth in 37 CFR 1.20(i)(2).
- (3) A maintenance fee of \$445.00 was submitted on July 18, 2003, together with \$700.00 surcharge under the firm check of \$1,145.00, a copy of which is enclosed.

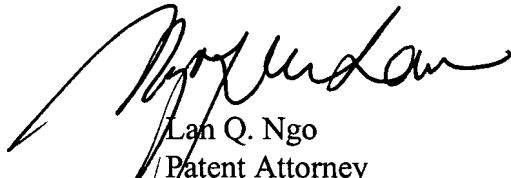
Commissioner for Patents  
November 6, 2003  
Page 2

- (4) Enclosed is a petition form SB-66 which includes a declaration according to 37 CFR 1.68.

In accordance with your October 29, 2003 letter and pursuant to 37 CFR 1.378, I respectfully request your office to affirm that the delay in paying the maintenance fee was unintentional, and that the fees previously submitted, along with the enclosed check, are sufficient to revive the above patent.

I look forward to your favorable response.

Very truly yours,



Lan Q. Ngo  
Patent Attorney  
USPTO Registration: 50549

Enclosures

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UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
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ALEXANDRIA, VA 22313-1450  
www.uspto.gov

Paper No. 15

MCFATRIDGE, BAKER & DEAN, P.C.  
2228 SHIP'S MECHANIC ROW, SUITE 220  
GALVESTON, TX 77550

COPY MAILED<sup>®</sup>

OCT 29 2003

In re Patent No. 5,891,260 :  
Issue Date: April 6, 1999 :  
Application No. 08/795,038 :  
Filed: February 5, 1997 :  
Title of Invention: PRODUCT RECOVERY :  
SYSTEM :

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition filed under 37 CFR 1.378(e), August 25, 2003, requesting reconsideration of a prior decision which refused to accept under § 1.378(b) the delayed payment of the first maintenance fee for the above-referenced patent.

The petition is **dismissed**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR § 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR § 1.136(a) or (b). No further fee is due for seeking reconsideration. If petitioner does not reply within the time period set, the decision will be based upon the administrative record to date.

The patent issued April 6, 1999. Accordingly, the first maintenance fee due could have been paid during the period from April 6, 2002 through October 6, 2002 or with a surcharge during the period from October 7, 2002 through April 6, 2003. This patent expired on April 7, 2003.

A petition under 37 CFR 1.378(b) to accept late payment of the maintenance fee was filed on July 30, 2003 and was dismissed in a decision mailed August 13, 2003.

The instant petition under 37 CFR 1.378(e) requesting reconsideration of the decision of August 13, 2003 was filed on August 25, 2003. The petition provides detailed information concerning the unfortunate technical issues experienced regarding the computer system relied upon for the notification and payment of maintenance fees. The chronology includes the period from April 10, 2002 through October 10, 2002 which incidentally coincides with the period of time within which the maintenance fees could have been paid without a surcharge. Petitioner further explains that a physical audit was conducted of the scheduled payment of maintenance fees for all patents and trademarks around June 30, 2003.

The explanation suggests that the computer issues lasted for approximately six months. Even in view of the computer issues that began around April 2002, petitioners did not conduct a physical audit of scheduled maintenance fee payments until at least eight months later. The evidence further suggests that the computer issues appear to have been resolved by October 10, 2002.

Petitioner has still not shown diligence in either preventing the issues that ultimately lead to the computer breakdown, or diligence in having a back up system in the event of a

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possible computer breakdown to ensure that all maintenance fees would be timely paid. Additionally, in light of the existing computer problems, petitioner has not shown any evidence to justify the delay in conducting the physical audit more than eight months after October 2002. Surely in April 2002, even without the computer system, petitioner had to know that maintenance fees had to be due on some patents, even without knowing specifically which ones were due. A physical audit of scheduled maintenance fees between April and October 2002 would have revealed that the maintenance fee on the above identified patent was due and would have allowed petitioner to make the payment even without a surcharge being due.

Further, even with a surcharge, this patent could have been prevented from expiring if reasonable care had been exercised from the period October 11, 2002 through April 6, 2003.

The showings supplied with the renewed petition, and those previously of record, only speak to steps taken subsequent to the expiration of the instant patent, which are relevant to the required showing under the rule of the steps taken to file a petition promptly after the expiration of this patent. However, any petition seeking reinstatement must also enumerate, under the rule, the steps that were taken to ensure timely payment of the maintenance fee, which must necessarily be steps taken *prior* to the expiration of the patent. See 37 CFR 1.378(b)(3); MPEP 2590.

In summary, the showing of record has been considered, but does not rise to the level of unavoidable delay. Rather, the showing of record is of a lack of diligence on the part of petitioner. Petitioner has presented no indication that any steps were taken to ensure timely payment of the maintenance fee. Petitioner apparently made no provisions to ensure timely payment of the maintenance fee.

Since petitioner has still not shown unavoidable delay the petition will be dismissed again. Petitioner may wish, in the alternative, to request reconsideration in the form of a petition under 37 CFR 1.378(c), requesting that the unintentionally delayed payment of a maintenance fee be accepted. The additional surcharge due in this instance would be \$940.00.

A petition to accept the delayed payment of a maintenance fee under 35 U.S.C. 41© and 37 CFR 1.378© must be filed within twenty four months from the end of the six month grace period (e.g., the expiration date of the patent and be accompanied by (1) a verified statement that the delay was unintentional, (2) payment of the appropriate maintenance fee, unless previously submitted, (3) payment of the \$1,640.00 surcharge (the \$700.00 surcharge already paid may be credited thereto leaving a balance due of \$940.00) set forth in 37 CFR 1.20(I)(2). The statement can be verified by using the attached petition form which includes a declaration according to 37 CFR 1.68.

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the patent was expired until the filing of the petition to reinstate under 37 CFR 1.378(c), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.378(c).

Further correspondence with respect to this matter should be addressed as follows:

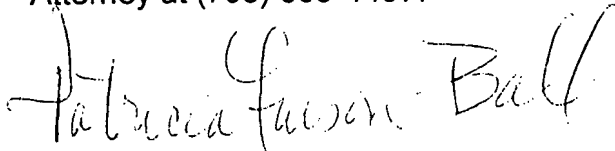
By mail:        Mail Stop Petitions

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

By FAX: (703)308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite CP4-3C23  
2201 South Clark Place  
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned Petitions  
Attorney at (703) 305-4497.



Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions

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**McFATRIDGE, BAKER & DEEN, P.C.**  
2525 SOUTH SHORE BLVD., SUITE 410  
LEAGUE CITY, TEXAS 77573

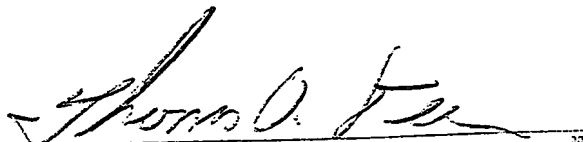
COMMUNITY STATE BANK  
SCARSDALE BANKING CENTER  
11102 SCARSDALE BLVD.  
HOUSTON, TEXAS 77089  
88-1108/1131

07/18/03

1658

PAY  
TO THE ORDER OF Director of United States Patent and Trademark Office----- \$1,145.00

One Thousand One Hundred Forty-Five and No/100----- DOLLARS

  
AUTHORIZED SIGNATURE

MEMO Inline-maintenance fee-Pat No. 5,891,260  
Application No. 795,038

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Security features. Details on back.